

15.403-3 Requiring data other than certified cost or pricing data.

(a)

(1) In those acquisitions that do not require certified cost or pricing data, the contracting officer shall-

(i) Obtain whatever data are available from Government or other secondary sources and use that data in determining a fair and reasonable price;

(ii) Require submission of data other than certified cost or pricing data, as defined in [2.101](#), from the offeror to the extent necessary to determine a fair and reasonable price ([10 U.S.C.2306a\(d\)\(1\)](#) and [41 U.S.C.3505\(a\)](#)) if the contracting officer determines that adequate data from sources other than the offeror are not available. This includes requiring data from an offeror to support a cost realism analysis;

(iii) Consider whether cost data are necessary to determine a fair and reasonable price when there is not adequate price competition;

(iv) Require that the data submitted by the offeror include, at a minimum, appropriate data on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies; and

(v) Consider the guidance in section [3.3](#), chapter 3, volume I, of the Contract Pricing Reference Guide cited at [15.404-1\(a\)\(7\)](#) to determine the data an offeror shall be required to submit.

(2) The contractor's format for submitting the data should be used (see [15.403-5\(b\)\(2\)](#)).

(3) The contracting officer shall ensure that data used to support price negotiations are sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror data should be limited to data that affect the adequacy of the proposal for negotiations, such as changes in price lists.

(4) As specified in section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261), an offeror who does not comply with a requirement to submit data for a contract or subcontract in accordance with paragraph (a)(1) of this subsection is ineligible for award unless the HCA determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

(i) The effort made to obtain the data.

(ii) The need for the item or service.

(iii) Increased cost or significant harm to the Government if award is not made.

(b) Adequate price competition. When adequate price competition exists (see [15.403-1\(c\)\(1\)](#)), generally no additional data are necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional data are necessary to determine the reasonableness of price, the contracting officer shall, to the maximum extent practicable, obtain the additional data from sources other than the offeror. In addition, the contracting officer should request data to determine the cost realism of competing offers or to evaluate competing approaches.

(c) Commercial items.

(1) At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see [15.404-1\(b\)](#)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional data from sources other than the offeror, then the contracting officer shall require the offeror to submit data other than certified cost or pricing data to support further analysis (see [15.404-1](#)). This data may include history of sales to non-governmental and governmental entities, cost data, or any other information the contracting officer requires to determine the price is fair and reasonable. Unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies, the contracting officer shall require that the data submitted by the offeror include, at a minimum, appropriate data on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price.

(2) *Limitations relating to commercial items* ([10 U.S.C 2306a\(d\)\(2\)](#) and [41 U.S.C. 3505\(b\)](#)).

(i) The contracting officer shall limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

(ii) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for data relating to commercial items to include only data that are in the form regularly maintained by the offeror as part of its commercial operations.

(iii) The Government shall not disclose outside the Government data obtained relating to commercial items that is exempt from disclosure under [24.202\(a\)](#) or the Freedom of Information Act ([5 U.S.C.552\(b\)](#)).

(3) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, see [15.403-1\(c\)\(3\)\(ii\)](#).

Parent topic: [15.403 Obtaining certified cost or pricing data.](#)